

1 HONORABLE RONALD B. LEIGHTON
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UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

10 GENERAL METALS OF TACOMA, INC., a
11 Washington corporation, and ARKEMA,
12 INC., a Pennsylvania corporation,

Plaintiffs,

Case No. C05-5306RBL

13 v.
14 BEAN ENVIRONMENTAL LLC, a
15 Delaware Limited Liability Company; and
16 BEAN DREDGING LLC, a Louisiana
Limited Liability Company,

Defendants.

ORDER

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19 THIS MATTER comes on before the above-entitled Court upon Plaintiffs' Motion for Partial Summary
20 Judgment to Dismiss Defendants' Claims for Fraud and Negligent Misrepresentation [Dkt. #138].

21 Having considered the entirety of the records and file herein, and having heard the argument of the
22 parties, the Court hereby rules as follows:

23 The defendants seek rescission of the contract between Bean and HHCG based upon HHCG's failure
24 to disclose the presence of asbestos in areas to be dredged. Bean alleges that this failure to disclose is fraud
25 in the inducement. The defendants argue that they would not have entered into the contract to dredge the area
26 had they known of the presence of asbestos.

27 Rescission is an equitable remedy to be decided by the Court. *See Willener v. Sweeting*, 107 Wn.2d
28 388, 397 (1986). The defendants claim they were damaged as a result of the alleged fraud because they

1 entered into a contract they would not otherwise have entered. Based upon the facts presented so far, genuine
2 issues of material fact exist as to whether or not defendants would have entered the contract had they known
3 of the asbestos. The existence of genuine issues of material fact preclude the entry of summary judgment. It
4 may appear after the Court has heard the evidence at trial that defendants' request to rescind the contract lacks
5 merit; however, the Court will not at this time summarily dismiss this claim.

6 At trial, the fact of the discovery and remediation of asbestos may be addressed through testimony,
7 however, the argument regarding fraud in the inducement justifying rescission will only be addressed to the
8 Court outside the presence of the jury.

9 Plaintiffs' Motion for Partial Summary Judgment [Dkt. #138] is **DENIED**.

10 **IT IS SO ORDERED.**

11 The Clerk shall send uncertified copies of this order to all counsel of record, and to any party appearing
12 pro se.

13 Dated this 1st day of December, 2006.

14 
15 Ronald B. Leighton
16 RONALD B. LEIGHTON
UNITED STATES DISTRICT JUDGE